Holiday entitlements carry over indefinitely if employer refuses to offer holiday pay

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Workers' entitlements to paid annual leave will carry over indefinitely in circumstances where the employer has refused to offer holiday pay. This means that the accumulated unpaid holiday pay earned throughout the working relationship becomes payable as a lump sum on termination.

Mr King was a salesman for the Sash Window Workshop. For 13 years, he worked on a commission-only basis and was never paid for periods of sickness absence or annual leave. He was at one stage offered an employment contract with the company, but he rejected it. The company terminated Mr King's contract when he reached the age of 65; in response, he brought claims of age discrimination and unpaid holiday pay.

In relation to his holiday pay claim, Mr King alleged that he had not taken his annual leave entitlement each year because he had been told it would be unpaid.

It having been held that Mr King was a worker (and therefore eligible to receive holiday pay), the remaining question was whether Mr King was entitled to payment in respect of the proportion of annual leave which he had declined to take each year.

The European Court of Justice noted that a worker who is unsure as to whether they will be paid for annual leave (or knows they will not be paid) will not get the full benefit of that annual leave as a period of relaxation, and may be discouraged from taking it altogether. Therefore, the question of whether Mr King had actually put in any holiday requests at any stage was not pertinent.

The ECJ held that, where a worker has not made use of their right to annual leave over a period of years because the employer wrongly denied holiday pay or indicated that it would, that holiday entitlement carries over until termination.

This case creates some potential exposure for employers for large holiday pay payments falling due on termination. Employers may wish to offer paid holiday in future, although in doing so they may risk undermining any claims that such staff are not 'workers' or 'employees' and not therefore entitled to paid holiday. In any event, offering paid holiday

from now onwards would not remove the risk of claims in respect of untaken holiday in the past.

King v The Sash Window Workshop Ltd and another C-214/16

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